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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/668,007

09/23/2003

Masaaki Ogura

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OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER

KHATRI, ANIL

ART UNIT

PAPER NUMBER

2191

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

02/12/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/668,007

Applicant(s)

OGURA, MASAOKI

Examiner

Anil Khatri

Art Unit

2191

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-78 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-78 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 2/18/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 101*

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

*Analysis:* Claims 62-77 are disclosed by the applicant as being a “a computer readable recording medium...”. Since the claims are each a series of steps to be performed on a computer the processes must be analyzed to determine whether they are statutory under 35 USC 101.

Claims 62-77 are not limited to tangible embodiments instead being defined as including both tangible embodiments (e.g., [computer readable medium]) and intangible embodiments (e.g., [transmission media, radio frequency (RF), infrared (IR), a carrier wave, telephone line, a signal, etc.]). As such, the claim is not limited to statutory subject matter and is therefore non-statutory. To overcome this type of 101 rejection the claims need to be amended to include only the physical computer media and not a transmission media or other intangible or non-functional media.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-3, 5-22, 24-62 and 78 are rejected under 35 U.S.C. 102(b) as being anticipated by *Imamatsu* USPN 6,687,901.

Regarding claims 1, 20, 36, 41, 46, 62 and 78

*Imamatsu teaches,*

a first storage part storing first software with which second software of each of the electronic apparatuses is overwritten to be updated (figures 2-5, 9, 11, column 5, lines 61-67, “an updated software...”, column 6, line 23-35); and

a software transmitting part that transmits the first software to the intermediary apparatus via the communication line (figures 1-2);

the intermediary apparatus comprises: a second storage part (summary of the invention);

a software writing part that writes the first software to the second storage part when acquiring the first software from the managing apparatus (figures 2-5, 9, 11, column 8, lines 23-32, “version write...); and

a software transmitting part that transmits the first software stored in the second storage part to one of the electronic apparatuses which one requires the second software thereof to be updated (figures 2-5, 9, 11, column 8, lines 55-64, “a plurality of updates...); and

the electronic apparatuses each comprises:

a non-volatile storage part storing the second software controlling an operation of the electronic apparatus (figures 4-6, column 5, lines 47-52) ; and

a software updating part that updates the second software stored in the non-volatile storage part based on the first software when receiving the first software from the intermediary apparatus (figure 8, column 10, lines 1-17, “ downloading of the updates...”).

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Regarding claims 8, 14, 16, 25, 30, 42, 44, 51, 56, 67 and 72

*Imamatsu teaches,*

a status checking part that checks a status of the one of the electronic apparatuses (column 7, lines 20-32, “accordingly... downloading time); and

an update date and time changing part that changes the update date and time stored in the second storage part so that a start of the updating of the second software is deferred for a predetermined period of time when it is determined based on a result of the checking by the status checking part that the one of the electronic apparatuses is prevented from starting the updating of the second software immediately ( figures 2-5, 9, 11, column 8, lines 23-32, “version write...).

Regarding claims 3, 5-7 and 9-19

Rejection of claim 1 is incorporated and further claims 3, 5-7 and 9-19 recited and inherits similar limitations therefore, claims 3, 5-7 and 9-19 are rejected under same rational.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over

*Imamatsu* USPN 6,687,901 taken with *Todd et al* USPN 5,867, 714.

Regarding claims 4 and 23

*Imamatsu teaches,*

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the software transmitting part of the managing apparatus transmits the first software stored in the first storage part to the intermediary apparatus at a request thereof (figures 2-5, 9, 11, column 5, lines 61-67, “an updated software...”, column 6, line 23-35); and

a transmission requesting part that requests the managing apparatus to transmit the first software to the intermediary apparatus when the update date and time stored in the second storage part is reached (figures 2-5, 9, 11, column 8, lines 55-64, “a plurality of updates...”). *Imamatsu* does not teach explicitly a schedule writing part that writes the update date and time to the second storage part when receiving the update date and time from the managing apparatus; and

a schedule generating part that generates an update date and time for updating the second software; and a schedule transmitting part that transmits the generated update date and time to the intermediary apparatus. However, *Todd et al* teaches (figure 2, column 13, lines 42-48, “flow diagram...specific request”). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to incorporate scheduler to routine updates. The modification would have been obvious because one of ordinary skill in the art would have been motivated to combine teaching updating software from one system to another with scheduling so updating gets on time to gain efficiency with the system.

Regarding claims 21-22 and 24, 26-35

Rejection of claim 20 is incorporated and further claims 21-22 and 24, 26-35 recited and inherits similar limitations therefore, claims 21-22 and 24, 26-35 are rejected under same rationale.

Regarding claims 37-40

Rejection of claim 36 is incorporated and further claims 37-40 recited and inherits similar limitations therefore, claims 37-40 are rejected under same rationale.

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Regarding claims 43 and 45

Rejection of claim 41 is incorporated and further claims 43 and 45 recited and inherits similar limitations therefore, claims 43 and 45 are rejected under same rational.

Regarding claims 47-49, 52-55 and 57-61

Rejection of claim 46 is incorporated and further claims 47-49, 52-55 and 57-61 recited and inherits similar limitations therefore, claims 47-49, 52-55 and 57-61 are rejected under same rational.

Regarding claims 63-66 and 68-71

Rejection of claim 62 is incorporated and further claims 63-66 and 68-71 recited and inherits similar limitations therefore, claims 63-66 and 68-71 are rejected under same rational.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anil Khatri whose telephone number is 571-272-3725. The examiner can normally be reached on M-F 8:30-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Zhen can be reached on 571-272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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**ANIL KHATRI**  
**PRIMARY EXAMINER**